IN THE HIGH COURT OF HIMACHAL PRADESH
SHIMLA

Arb.Case No.33 of 2006.
Date of decision:4.10.2007.

Pushp Raj …**Petitioner**

Versus

State of H.P. & Another. …**Respondents.**

Coram

The Hon'ble Mr.Justice Dev Darshan Sud,J.

Whether approved for reporting ?[1]

For the Petitioner: **Mr.J.S. Bhogal, Senior Advocate with Mr.Suneet Goel, Advocate.**

For the Respondents: **Mr.Rajan Dewan, Additional Advocate General.**

Dev Darshan Sud,J.

This petition under Section 34 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as the "Act") has been preferred by the claimant against the award passed by the Arbitrator on 9.8.2006.

It is averred that the parties to this petition had entered into an arbitration agreement agreeing to refer all disputes arising out of or relating to the work of "C/o link road to village Shiaso Km 0/0/ to 3/0 (SH : cutting work at RD 0/0 to

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[1] ***Whether the reporters of Local Papers may be allowed to see the judgement***?

1/0)" in respect of which agreement No.23 of 2000-2001 had been executed between the parties.

It is undisputed that Shri Balbir Singh Kanwar, retired Executive Engineer, was nominated as Arbitrator in Arbitration Case No.93 of 2002 by the Hon'ble Designated Judge of this Court. He entered upon the reference and ultimately, after considering the claims and counter claims of the parties, passed the impugned award.

The basic grievance of the petitioner-claimant is that while making the award, the Arbitrator had entered reference on six claims and did not return any finding in respect of a claim for Rs.16,91,314.50 paise, preferred by the petitioner for disposal of the surplus earth excavated material etc. as claimed in the petition. The claimant-petitioner is now before this Court praying that the award be set aside and the matter be determined afresh.

In reply to the objections preferred by the petitioner and more especially claim regarding which a grievance is made by the petitioner-claimant, the respondents have submitted that the claim has been declined because the payment as claimed was not legitimately due to the petitioner. Affidavits by way of evidence have been filed by the parties.

I have heard learned counsel for the parties and have gone through the pleadings.

The fact, whether a claim could or could not be allowed, was the subject matter of arbitration proceedings and cannot be determined by this Court. It was imperative for the Arbitrator to have determined whether the claim could be allowed or rejected and while doing so he has to dispose it of by assigning clear and cogent reasons. This is the mandate of Section 31(3) of the Act.

The award being incomplete and cannot be accepted as an award on the controversy before the Arbitrator. The matter is remitted to the Arbitrator to determine the claim made by the petitioner for the removal of the earth work etc., as claimed by him in the petition as claim No.6. Needless to add that he shall determine this aspect of the matter by giving the parties a chance of being heard and lead such evidence oral or documentary as may be required for just determination of the controversy. He shall proceed in the matter with expedition. This petition is, accordingly, allowed. The matter is sent back to the Arbitrator for determination afresh as directed. The petition is disposed of with these directions. There shall be no order as to costs.

October 4, 2007. **(Dev Darshan Sud)**
(aks) **Judge.**